

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4184 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
No
2. To be referred to the Reporter or not? No :
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No : NO
5. Whether it is to be circulated to the Civil Judge? No :

KAMDHENU UDYOG

Versus

DEPUTY DIRECTOR

Appearance:

MS SUDHA R GANGWAR for Petitioner

MR BP BHATT for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 30/07/1999

ORAL JUDGEMENT

1. List has been revised thrice none appears for the petitioner. Learned Counsel for the respondent Shri B.P. Bhatt has been heard.

2. The prayer of the petitioner in this writ petition is for quashing the order (Annexure : A) dated 13.4.1999 passed by the Employees State Insurance

Corporation under Section 45-A of the E.S.I. Act, 1948. Counter Affidavit has been filed on the side of the respondent. Preliminary objection has been raised by the learned Counsel for the respondent that the writ petition is not maintainable and the petitioner should have raised the dispute before E.S.I. Court. Normally such preliminary objections are entertained and decided at the time of admission of writ petition. The writ petition was however admitted on 16.6.1999. As such under normal circumstances the writ petition has to be decided on merit. Learned Counsel for the respondent further contends that since he had no opportunity to raise the objection at the time of admission of this writ petition he may be heard on this point. Under the peculiar facts of this case and keeping in view the fact that the respondent was not heard at the time of admission this preliminary objection is being considered.

3. The impugned order has been passed under Section 45-A of the E.S.I. Act. This section authorises the Corporation to determine by order the amount of contribution payable in respect of the employees of the factory or establishment. No provision for Appeal has been made against this order of the Corporation under the Act. However, for adjudication of dispute and claim Employees Insurance Court has been constituted under Section 74 of the Act and the matters which are to be decided by E.S.I. Court are enumerated u/s.75 of the Act.

4. Section 75(g) of the Act provides that E.S.I. Court inter-alia can decide any other matter which is in dispute between the principal employer and the Corporation in respect of any contribution or benefit or other dues payable or recoverable (emphasis supplied) under this Act may be decided by the E.S.I. Court under this Act.

5. The dispute in the instant case was that the notice was issued by the Corporation to the petitioner to show cause why it should not be asked to pay a sum of Rs.1,06,465/- towards dues from the Principal employer. Admittedly according to the writ petition the said notice was served on the petitioner. No cause was shown nor any written statement or objection was filed before the Corporation. The Corporation granted personal hearing also to the petitioner and fixed 16.10.1998 as the date of hearing. Reply to the show cause notice was to be submitted by 16.9.1998. Neither reply to the notice was submitted nor personal hearing was availed on the above dates. Consequently the impugned order was passed. The contention in the writ petition is that because the

notice was misplaced from the file of the petitioner it could not file defence and contest before the Corporation. It is not the case in writ petition that the notice was not served. If notice was served then the date of appearance must have been noted by the employees of the petitioner who received the notice. Even if the notice was misplaced appearance could be put in before the Corporation on 16.9.1998 with a request to grant time for filing reply and with further request for supplying copy of notice. That was not done. Even on 16.10.1998 none appeared from the side of the petitioner before the Corporation. Under the circumstances the petitioner, if aggrieved against the impugned order, could have approached the E.S.I. Court under Section 75(g) of the Act. That has also not been done.

6. There is mis-statement of fact in the writ petition that in the impugned order it has been mentioned that no Appeal, etc. will be entertained. No such mention is to be found in the impugned order Annexure : A.

7. Thus, for the reasons stated above in the first instance the writ petition is not maintainable because alternative remedy under Section 75 of the Act is available to the petitioner and in the second place even on merits there is no sufficient ground for interference in this writ petition. It is, therefore, dismissed. No order as to costs.

sd/-

Date : July 30, 1999 (D. C. Srivastava, J.)

sas